

BEFORE THE STATE BOARD OF EQUALIZATION  
OF **THE** STATE OF CALIFORNIA

In the **Matter** of the Appeal of )  
 )  
SANTA PAULA SAVINGS AND LOAN ASSOCIATION )

For Appellant: James W. Law  
Vice President and Secretary

For Respondent: Crawford H. Thomas  
Chief Counsel

A. Ben Jacobson  
Counsel

O P I N I O N

This appeal is made pursuant to section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Santa Paula Savings and Loan Association against a proposed assessment of additional franchise tax in the amount of **\$15,941.43** for the income year 1966.

The only issue presented is the amount of gain, if any, appellant realized when it acquired certain real properties from its debtor by deed in lieu of foreclosure.

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Appellant savings and loan association made loans to a borrower for the construction of homes on lots in a residential subdivision of Santa Paula, California. Each loan was secured by a specific lot and the home to be built on it. Before the homes were completed, however, the borrower defaulted on the loans. As payment for the loans, the properties were deeded to appellant on October 5, 1966, in lieu of foreclosure.. Subsequently, appellant had an appraisal made of each property by an independent and qualified appraiser. The appraiser furnished two valuations. One, entitled "Replacement", apparently estimated the value of each property as if fully completed, and totaled **\$922,740.00** for 39 lots and homes. The other, entitled "Physical (Net) ", **was** based upon the assumption that the 39 homes were approximately 90 percent completed as of October 5, 1966, and totaled **\$861,940.00**.

Appellant reported no gain or loss upon acquisition of the 39 properties. Most were not completed and sold by it until about a year after they were acquired, and for a few the period extended to an additional half year or more. While their total sales price aggregated **\$880,732.00**, their total recorded basis was **\$920,314.00**, which together with selling costs of **\$33,314.00**, indicated a loss upon ultimate disposition.

In view of appellant's own appraisals, respondent concluded that appellant realized a gain upon acquisition. Respondent ultimately used the "Physical (Net)" figures totaling **\$861,940.00**, and after deducting principal loan balances of **\$688,608.02** at acquisition@, and costs of **\$5,527.47**, computed a gain of **\$167,804.51.1/**

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1/ Actually, 47 properties were deeded in lieu of foreclosure but respondent did not determine a gain upon acquisition as to eight determined to have been sold within six months. The correctness of respondent's action concerning these eight properties is not under consideration here.

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Originally, respondent used the "Replacement" appraisals in determining the tax liability but after appellant's protest it revised its gain computations by using the "Physical (Net)" appraisals, as explained above.

Appellant contends that no gain was realized because the appraisals erroneously treated the homes as about 90 percent completed. It explains that an amount substantially exceeding 10 percent of the appraised value was spent to complete each property for sale, and more than 30 percent of such value was expended in some instances. Furthermore, appellant claims such market values should be reduced by estimated disposal costs. It also emphasizes the net loss upon disposition.

It is well established that a taxing authority's determination of a factual question is presumptively correct, and the burden is on the taxpayer to prove it erroneous. (Todd v. McColgan, 89 Cal. App. 2d 509 [201 P.2d 414]; Hoefle v. Commissioner, 114 F.2d 713; Universal Steel Co. v. Commissioner, 46 F.2d 908.)

Appellant has not met this burden. In fact, respondent is reasonably relying upon the "Physical (Net)" valuations obtained by appellant for the latter's own purposes and made by an independent and qualified appraiser. No other lower valuations have been presented. While costs of completion were apparently considerably more than appellant expected, this was conceivably the result of economic and other factors rather than of any significant invalidity in the appraisal valuations. During the period between acquisition and sale there was undoubtedly a rise in the cost of labor and materials in view of the steady inflationary rise in these costs for many years. Problems resulting after the takeover such as delays, possible changes to different contractors, or other variables, could have contributed to the increased costs. On the other hand, the decline in the market for homes in southern California occasioned by the decrease in activity in the aerospace industry may have explained the ultimate sales prices. In short, since respondent

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used appellant's own appraisals, and appellant has not proven their invalidity, we conclude that respondent did not err in computing the amount of the taxable gain upon acquisition./

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**2/** For income years beginning after December 31, 1967, such gains by state or federal savings and loan associations are not recognized for tax purposes. (Rev. & Tax. Code, § 24348.5.)

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS **HEREBY** ORDERED, ADJUDGED AND DECREED, pursuant to section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Santa Paula Savings and Loan Association against a proposed assessment of additional franchise tax in the amount of **\$15,941.43** for the income year 1966, be and the same is hereby sustained.

Done at Sacramento, California, ~~this 19th day,~~  
of February, 1974, by the St@ Board, @? **Equalization.**

*Mark K. Green*, Chairman  
*John W. Lynch*, Member  
*John K. Har*, Member

*William B. Bessett*, Member

ATTEST: *W. W. Randle*, Secretary